

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR: Minnesota Office of Pipeline Safety

In the Matter of Century Link Notices of
Probable Violation 20190408-1; 20190410-1;
20190423-1; 20190409-1; 20190391-1;
20190452-1; 20190462-1; 20190461-1;
20190396-1; and, 20190476-1.

**NOTICE AND ORDER
FOR PREHEARING CONFERENCE**

TO: Jason Topp, Assistant General Counsel, CenturyLink, 200 South 5th St, Rm. 2200,
Minneapolis, MN 55402

CenturyLink (hereinafter “CenturyLink” or “Respondent”) IS HEREBY NOTIFIED that the
Minnesota Office of Pipeline Safety (“OPS”) has initiated an administrative action pursuant to Minn.
Stat. § 216D.08 (2018).

IT IS HEREBY ORDERED that a prehearing conference will be held on August 21, 2019, at
9:30 a.m. At that time, the Parties will call 1-888-742-5095 and enter conference code 454 161
2416. **All mail sent to the Administrative Law Judge should be directed to PO Box 64620, St.
Paul, Minnesota, 55164-0620.**

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this
matter to James LaFave, Administrative Law Judge, Office of Administrative Hearings, PO Box
64620, St. Paul, Minnesota, 55164-0620; (651) 361-7870.

The hearing will be conducted pursuant to the contested case procedures set out in Chapter
14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules
1400.5100 – 1400.8500 and Minn. Stat. §§ 326.32 – 326.339. A copy of these materials may be
purchased from the Minnesota Book Store, telephone 651-297-3000, or are available at
www.revisor.leg.state.mn.us.

The attorney for the Minnesota Office of Pipeline Safety, Stephen D. Melchionne, Assistant
Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101-2134, telephone
(651) 757-1207, may be contacted to discuss discovery or informal disposition of this matter.

ALLEGATIONS

1. The Minnesota Legislature established a statewide “one call” system in 1987. The
general purpose of the system is to receive notices of intent to excavate from excavators, and in turn
notify underground facility operators, who then mark their facilities to avoid damage during
excavation. See Minn. Stat. § 216D.01, et seq.

2. An “operator” is a person who owns or operates an “underground facility,” which is defined as “an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, water including storm water, steam, sewage, and other similar substances.” Minn. Stat. § 216D.01, subds. 9 and 11. CenturyLink is an operator for the purposes of Minn. Stat. § 216D.01, et seq.

3. The notification center is operated by a non-profit corporation approved by the Commissioner of Public Safety. Minn. Stat. § 216D.03, subd. 2. The current operator of the notification center is Gopher State One-Call (“GSOC”). See <http://www.gopherstateonecall.org/> (last visited 6/12/19).

4. Upon receipt of a notice of intent to excavate, an operator is required to “locate and mark” their underground facilities before the excavation start time on the notice. Minn. Stat. § 216D.04, subd. 3(a).

5. If an operator cannot complete the marking before the excavation start time, the operator is required to “promptly” notify the excavator or land surveyor who submitted the initial notice. Minn. Stat. § 216D.04, subd.3(e).

6. An excavator may also request a meeting with operators through the notification center. Minn. R. 7560.0350, subp. 1. When an operator requests such a meeting, the operator must make a reasonable attempt to attend the meeting or contact the excavator before the meeting to reschedule. Minn. R. 7560.0350, subp. 2.

7. An excavator shall also provide notice before starting an emergency excavation. Minn. R. 7560.0325, subp. 1. Upon receipt of notice of an emergency excavation, an operator is required to either “attempt to contact the excavator within one hour” or “locate and mark the underground facility within three hours of notice”. Minn. R. 7560.0325, subp. 3(A) and Minn. R. 7560.0325, subp. 2(B).

8. Each notice, whether it be a locate and mark request or a meet request is known as a “ticket.” GSOC assigns a unique identification number to each ticket.

9. The Commissioner of Public Safety may impose civil penalties for violations of Minn. Stat. §§ 216D.01-07. Minn. Stat. § 216D.08, subd. 1. OPS is the division within the Department of Public Safety tasked with regulation of the Excavation Notice System.

10. In early April of 2019, OPS began receiving complaints that CenturyLink was not responding to GSOC locate requests as required. From April 1 to 5, 2019, OPS had over twenty-five complaints. The rate at which complaints were received increased from that point, and OPS received approximately forty-five complaints from April 8 to 12, 2019, and nearly one-hundred forty-nine complaints from April 15 to 20, 2019.

11. On April 17, 2019, OPS mailed to CenturyLink a Notice of Probable Violation-20190408-1 (“NPV”), with a proposed civil penalty of \$4,000 arising from two GSOC tickets for violations of Minn. R. 7560.0325, subp. 2(A) and Minn. R. 7560.0325, subp. 2(B).

12. On April 19, 2019, OPS mailed to CenturyLink four NPVs: NPV-20190410-1, NPV-20190423-1, NPV-20190409-1, and NPV-20190391-1.

- a. NPV-20190410-1 proposed a civil penalty of \$2,000 arising from two GSOC tickets for violations of Minn. Stat. § 216D.04, subd. 3(a).
- b. NPV-20190423-1 proposed a civil penalty of \$1,000 arising from one GSOC ticket for a violation of Minn. Stat. § 216D.04, subd. 3(a).
- c. NPV-20190409-1 proposed a civil penalty of \$2,000 arising from one GSOC ticket for a violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), and Minn. Stat. § 216D.04, subd. 3(e).
- d. NPV-20190391-1 proposed a civil penalty of \$8,000 arising from four GSOC tickets for violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), and Minn. Stat. § 216D.04, subd. 3(e).

13. On April 22, 2019, OPS mailed to CenturyLink an NPV-20190452-1, with a proposed civil penalty of \$100,000 arising from 144 GSOC tickets for violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), and Minn. Stat. § 216D.04, subd. 3(e).¹

14. The week of April 22 to 26, 2019, the number of complaints nearly doubled from the previous week to approximately three-hundred eight complaints.

15. On April 26, 2019, OPS mailed to CenturyLink an NPV-20190462-1, with a proposed civil penalty of \$ 19,600 arising from 47 GSOC tickets for violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), Minn. Stat. § 216D.04, subd. 3(e).

16. On April 26, 2019, OPS staff conducted a conference call with CenturyLink personnel to discuss the increasing number of complaints and CenturyLink status on addressing the backlog of GSOC tickets. OPS and CenturyLink also discussed CenturyLink's efforts to increase communication between CenturyLink and excavators regarding backlog and late tickets.

17. From April 29 through May 3, 2019, OPS received three-hundred ninety-one complaints regarding CenturyLink. OPS continued to meet with CenturyLink in person on April 30, 2019, and a conference call on May 3, 2019. CenturyLink continued to assure OPS that it was getting caught up on tickets and would be fully caught-up by mid-June.

18. On May 1, 2019, OPS mailed to CenturyLink an NPV-20190461-1 with a proposed civil penalty of \$300,000 arising from 358 GSOC tickets for violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), and Minn. Stat. § 216D.04, subd. 3(e).

19. On May 3, 2019, OPS mailed to CenturyLink an NPV-20190396-1 with a proposed civil penalty of \$1,000 arising from one GSOC ticket for a violation of Minn. R. 7560.0325, subp. 3.

¹ CenturyLink also violated the emergency notice provisions in Minn. R. 7560.0325, subp. 3, as identified in the spreadsheet, but those violations were not referenced in the NPV or used to calculate the amount of the penalty.

20. On May 6, 2019, CenturyLink hosted a forum for excavators via a call-in phone conference, to inform the industry of the situation regarding CenturyLink's backlog of GSOC tickets. OPS provided information to excavators regarding OPS's oversight and regulatory role in the process.

21. From May 6 to 10, 2019, OPS received three-hundred eighty-six complaints regarding CenturyLink.

22. On May 8, 2019, OPS mailed to CenturyLink an NPV-20190476-1 with a proposed civil penalty of \$350,000 arising from 392 GSOC tickets for violations of Minn. R. 7560.0350, subp. 2, Minn. Stat. § 216D.04, subd. 3(a), Minn. Stat. § 216D.04, subd. 3(e), and Minn. R. 7560.0325, subp. 3.²

23. On May 10, 2019, OPS and CenturyLink conducted another telephone conference. CenturyLink indicated that the situation was improving and CenturyLink was marking fifty percent of tickets on time.

24. From May 13 to 17, 2019, OPS received three-hundred seventy-three complaints regarding CenturyLink. This is the first week where the number of complaints about CenturyLink declined.

25. On May 17, 2019, OPS and CenturyLink met. At that meeting, CenturyLink requested that OPS hold the weekly NPVs to be addressed later so that CenturyLink staff could be used to address the backlog of GSOC tickets. OPS agreed and temporarily refrained from issuing additional NPVs.³

ISSUE

1. Whether Respondent should be required to pay the proposed penalties because of Respondent's violations of Minn. Stat. § 216D.04 and Minn. R. Ch. 7560?

ADDITIONAL NOTICE

1. Respondent's failure to appear at the hearing or any prehearing conference, may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

2. If any party has good cause for requesting a delay of the hearing or any prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the scheduled date. A copy of the request must be served on the other party.

² OPS is aware that the dates on the spreadsheet do not match the dates in the NPV. This was an inadvertent clerical error and the dates in the spreadsheet are correct, and the amount of the proposed penalty is correct. Additionally, the violations of Minn. R. 7560.0325, subp. 3 are not referenced in the NPV letter, but are included in the attached spreadsheet.

³ OPS has resumed issuing NPVs and, to date, has issued one additional NPV that is not currently part of this matter.

3. Any party intending to participate as a party in this proceeding must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Board's attorney. A Notice of Appearance form is enclosed.

4. All parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence, cross-examine witnesses and submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2.

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <http://mn.gov.oah/> or by calling 651-361-7900.


7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly.

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

9. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at <http://mn.gov/oah/> or by calling 651-361-7900.

10. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the Administrative Law Judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at PO Box 64620, St. Paul, Minnesota 55164-0620, or call (651) 361-7900 (voice) or (651) 361-7878 (TTY).

Dated this 10 day of July, 2019.


Bruce West, Director,
Minnesota Office of Pipeline Safety